

ENTERED

May 21, 2020

David J. Bradley, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

MARK ARMSTRONG <i>et</i>	§	CIVIL ACTION NO.
<i>al</i> ,	§	4:18-cv-01238
Plaintiffs,	§	
	§	
vs.	§	JUDGE CHARLES ESKRIDGE
	§	
WING ENTERPRISES	§	
INC,	§	
Defendant.	§	

ORDER

Defendant Wing Enterprises Inc objects to an order of the Magistrate Judge compelling it to produce limited information about its net worth with respect to the product alleged to be defective in this products-liability diversity action. Dkt 68.

The present dispute concerns the extent to which Texas Civil Remedies & Practice Code § 41.0115 pertains to discovery conducted in federal court under the Federal Rules of Civil Procedure. Plaintiffs Mark Armstrong and Erika Armstrong filed their motion to compel net worth discovery in July 2019. Dkt 15. The Magistrate Judge held a hearing on this motion in February 2020. Dkt 64 (minute entry order), Dkt 68-3 (hearing transcript). She there granted the motion in part. On March 4, 2020 this Court issued a temporary stay of this order pending the Court's ruling on Wing Enterprises's objections. Dkt 69.

When reviewing an objection to a nondispositive ruling by a magistrate judge, the district court "must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law." FRCP 72(a); 28 USC § 636(b)(1)(A); see also *DHI Group Inc v Kent*, 2019 WL 1958390, *2 (SD Tex).

The Court has reviewed the pleadings, the record, the objections, and the applicable law. No clear error appears in the subject order. It is also not contrary to law. The Magistrate Judge cited Fifth Circuit authority resolving an analogous issue, along with a recent federal district court decision dealing directly with § 41.0115. See *Passmore v Baylor Healthcare*, 823 F3d 292 (5th Cir 2016); *Hanan v Crete Carrier Corp*, 2019 WL 5837950 (ND Tex); Dkt 68-3 at 5–6.


Wing Enterprises's objections are OVERRULED.

Wing Enterprises also asks this Court to stay the subject discovery until its ruling on the pending motion for summary judgment, which could terminate this action on substantive grounds wholly unrelated to this disputed category of information. Dkt 68 at 24–25. This case has been previously referred to the Magistrate Judge for all pretrial proceedings. Dkt 54. Any further disputes on the scope or timing of the compelled discovery must be addressed to the Magistrate Judge. But the Court finds that Wing Enterprises should have the opportunity to make its request to the Magistrate Judge.

The temporary stay on the subject discovery is CONTINUED until such time that the Magistrate Judge can resolve a request that compliance await decision on the pending summary judgment motion. Wing Enterprises must bring any such request within ten days of this Order, or the stay will expire.

SO ORDERED.

Signed on May 21, 2020, at Houston, Texas.


Hon. Charles Eskridge
United States District Judge